

Changes to legislation: *The Criminal Evidence (Northern Ireland) Order 1999, SCHEDULE 2 is up to date with all changes known to be in force on or before 22 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

SCHEDULES

SCHEDULE 2 **N.I.**

Article 40(2).

TRANSITIONAL PROVISIONS AND SAVINGS

Interpretation

1.—(1) In this Schedule—

“the 1989 Order” means the Police and Criminal Evidence (Northern Ireland) Order 1989;

“commencement date”, in relation to any provisions of this Order and proceedings of any description, means the date on which those provisions come into operation in relation to such proceedings;

“continuing proceedings” (except in paragraph 2) means proceedings instituted before the commencement date;

“existing special measures power” means any power of the court to make an order or give leave, in the exercise of its inherent jurisdiction, for the taking of measures in relation to a witness which are similar to those which could be provided for by a special measures direction.

(2) For the purposes of this Schedule—

(a) proceedings other than proceedings on appeal are to be taken to be instituted—

- (i) where a justice of the peace issues a summons under Article 20 of the Magistrates' Courts (Northern Ireland) Order 1981, when the complaint for the offence is made;
- (ii) where a justice of the peace issues a warrant for the arrest of any person under that Article, when the complaint for the offence is made;
- (iii) where a person is charged with the offence after being taken into custody without a warrant, when he is informed of the particulars of the charge;
- (iv) where an indictment is presented under the authority of section 2(2)(c), (d), (e) or (f) of the Grand Jury (Abolition) Act (Northern Ireland) 1969, when the indictment is presented to the court;

and where the application of this head would result in there being more than one time for the institution of the proceedings, they shall be taken to have been instituted at the earliest of those times; and

(b) proceedings on appeal are to be taken to be instituted at the time when the notice of appeal is given or (as the case may be) the reference under section 10 or 12 of the Criminal Appeal Act 1995 is made.

Special measures under Part II

2.—(1) A special measures direction may be given in relation to a witness in continuing proceedings unless the court has before the specified date—

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- (a) given leave in relation to the witness in connection with those proceedings under Article 81 (evidence through television links) or Article 81A (video recordings of testimony of child witnesses) of the 1989 Order, or
- (b) exercised any existing special measures power in relation to the witness in connection with those proceedings.

(2) The repeals made by this Order shall not affect the continued operation in relation to a witness in continuing proceedings of Article 81 or 81A of the 1989 Order where before the specified date leave was given in relation to the witness in connection with those proceedings by virtue of Article 81 or Article 81A, as the case may be.

(3) Nothing in this Order affects the continued operation in relation to a witness in continuing proceedings of any order made or leave given under any existing special measures power exercised by the court before the specified date in relation to the witness in connection with those proceedings.

(4) In this paragraph—

- (a) “continuing proceedings” means proceedings instituted before the specified date;
- (b) “the specified date”, in relation to a witness in any proceedings, means such date as may be specified by the Secretary of State in a notice given to the court in question under Article 6(2), where the date is expressed to apply—
 - (i) for the purposes of this paragraph, and
 - (ii) in relation to any description of witnesses and proceedings within which the witness and the proceedings fall.

Protection of witnesses from cross-examination by accused in person

3. Nothing in Part III applies in relation to proceedings instituted before the commencement date for that Part.

Protection of complainants in proceedings for sexual offences

4.—(1) Nothing in Part IV applies in relation to continuing proceedings in which leave has been given before the commencement date for that Part—

- (a) under Article 4 of the Sexual Offences (Northern Ireland) Order 1978, or
- (b) (in the case of proceedings to which Article 4 does not apply) in the exercise of any similar power of the court exercisable by virtue of its inherent jurisdiction.

(2) Nothing in this Order affects the continued operation of any leave so given in relation to any such proceedings.

Competence of witnesses and capacity to be sworn

5. Nothing in Part V applies in relation to proceedings instituted before the commencement date for that Part.

Inferences from silence

6. The amendments made by Article 36—

- (a) apply only to proceedings instituted on or after the commencement date for that Article; but
- (b) so apply whether the relevant failure or refusal on the part of the accused took place before or after that date.

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Changes and effects yet to be applied to the whole Order associated Parts and Chapters:

Whole provisions yet to be inserted into this Order (including any effects on those provisions):

- art. 29(3)(aa) inserted by [2015 c. 9 \(N.I.\) Sch. 2 para. 11](#)
- art. 29(3)(aa) words substituted in earlier affecting provision [2015 c. 9 \(N.I.\), Sch. 2 para. 11](#) by [2022 c. 4 \(N.I.\) s. 4\(9\)\(h\)](#)